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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 355. 75

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM P. SAYWARD AND GEORGE A. MEIGS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED DECEMBER 29, 1891.

(14952.)

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No. 355.

THE UNITED STATES, PLAINTIFF IN ERROR,

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a United States circuit court, district of Washington, ninth circuit.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
WILLIAM P. SAYWARD AND GEORGE A. MEIGS, defendants. } No. 2.

P. H. Winston, for plaintiff; B. F. Dennison, for defendant'.

Transcript.

1 In the circuit court of the United States for the district of Washington, northern division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
WILLIAM P. SAYWOOD AND GEORGE A. MEIGS, defendants. } No. 2.

Plaintiff complains of defendants, and for cause of action against them alleges—

First. That on, to wit, the first day of May, 1889, the plaintiff was the owner of sixty fir trees, then standing and growing on the southwest quarter of the southeast quarter of section thirty-one, township twenty-four, north, of range one east, Willamette meridian, the said premises being then and there unoccupied public lands of the United States; that thereafter and prior to the 15th day of August, 1889, one Hugh Ross wrongfully and unlawfully trespassed upon said timber, and cut and removed from said premises said sixty fir trees and converted the same into saw logs, being about two hundred and ten thousand feet, board measure, the said logs then and there being of the value of fourteen hundred and seventy dollars; and that the said Hugh Ross did on, to wit, the 15th day of August, 1889, dispose of all of the said timber to the said defendants, and delivered the same to them at the head of Port Orchard Bay, in Kitsap County, State of Washington.

Second. That the said plaintiff during all the times herein mentioned was the owner of and entitled to the immediate possession of all of the said logs so cut and removed from the public lands as aforesaid.

Third. That on, to wit, the first day of December, 1889, at said Kitsap County aforesaid, the said defendants, then and there being in possession of said logs, wrongfully and unlawfully converted and disposed of
2 the same to and for their own use and benefit, to the damage of plaintiff in the sum of fourteen hundred and seventy dollars.

Wherefore plaintiff demands judgment against the said defendants for the sum of fourteen hundred and seventy dollars and for the costs and disbursements of action.

P. H. WINSTON,
U. S. Attorney for the District of Washington.
By P. C. SULLIVAN,
Assistant District Attorney.

And on the back of the foregoing is endorsed the words and figures following:

In the circuit court of the United States for the district of Washington, northern division. United States of America, plaintiff, vs. William P. Saywood and George A. Meigs, defendants. No. 2. Complaint. Filed April 30, 1890, in the U. S. circuit court. A. Reeves Ayres, clerk. By R. M. I. Hopkins, deputy. P. H. Winston, U. S. atty. P. C. Sullivan, asst.

3 In the circuit court of the United States for the district of Washington, northern division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
WILLIAM P. SAYWOOD AND GEORGE A. MEIGS, defendants.

The defendant George A. Meigs demurs to the complaint filed in the above entitled action, and states as grounds of his demurrer the following:

1. That it appears upon the face of the complaint that the matter in dispute does not exceed the sum or value of two thousand dollars.

2. That it appears on the face of the complaint that the court has no jurisdiction of the person of defendant, or of the subject-matter of the action.

B. F. DENNISON,
Attorney for George A. Meigs.

And on the back of the foregoing is endorsed the words and figures following:

In the circuit court of the United States for the district of Washington, northern division. United States of America, plaintiff, vs. William P. Saywood and George A. Meigs, defendants. No. 2. Demurrer. Filed June 6, 1890, in the U. S. circuit court. A. Reeves Ayres, clerk. By R. M. Hopkins, deputy. B. F. Dennison, atty. for G. A. Meigs.

4 In the United States circuit court for the northern division of the district of Washington.

(General Order Book, page 2, vol. 1. June 6, 1890.)

UNITED STATES
vs.
WILLIAM P. SAYWARD AND GEORGE A. MEIGS. } No. 2.

Now, on this day, this cause coming on to be heard upon the demurrer to the complaint on file herein, and the court having duly considered the same, it is ordered by the court that said demurrer be, and the same is hereby, sustained. To which ruling of the court the counsel for the United States excepts and his exception is allowed.

5 In the circuit court of the United States, ninth circuit, district of Washington.

UNITED STATES OF AMERICA
vs.
W. P. SAYWARD AND G. A. MEIGS. } No. 2.

Opinion on demurrer to complaint.—Filed July 8, 1890.

This action was commenced by the Government to recover the value of certain timber, alleged to have been cut on the public domain, amounting to the sum of $1,470.00.

The defendants have demurred to the complaint, and claim as ground for the demurrer that, although the United States Government is the plaintiff, as the amount sued for is less than $2,000.00, the case is not within the jurisdiction of this court. The identical question raised by this demurrer was passed upon by Judge Sawyer in the cases of The United States vs. C. Huffmaster, 35 Federal Reporter, page 81; United States vs. L. Huffmaster and United States vs. C. Huffmaster, page 83 of the same volume, in which he held that the several acts of Congress defining the jurisdiction of the circuit courts of the United States, approved March 3, 1875 (Supp. R. S. 173), and March 3, 1887 (24 St. 552), have so changed the law as to deprive the circuit courts of jurisdiction of actions at law where the amount involved is less than the minimum specified in these statutes, even in cases wherein the United States is plaintiff. Similar questions have been passed upon in the cases of Armstrong vs. Ettlesohn, 36 Federal Reporter, page 209; United States vs. Trautman et al., same volume page 275; McConville vs. Gilmour, sam volume, page 277, and United States vs. Shaw et al., 39 Federal Reporter page 433, and in those cases the decisions were contrary to those rendered by Judge Sawyer. Notwithstanding that the latter decisions and the majority in number are to the contrary, I consider it my duty to follow the ruling of Judge ———, who, if present, would be entitled to preside in this court, and in accordance with whose opinion the judgment would have to be rendered, whether I should agree with him or not. Therefore, without discussing the merits of the case, I will sustain the demurrer upon the authority of the decissions rendered by the circuit judge of this circuit.

C. H. HANFORD, *Judge.*

6 And on the back of the foregoing is endorsed the words and figures following:

United States vs. W. P. Sayward, et al., No. 2. Opinion filed July 8, 1890, in the U. S. circuit court, A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

7 In the United States circuit court for the northern division of the district of Washington.

UNITED STATES OF AMERICA
vs.
W. P. SAYWARD AND G. A. MEIGS. } No. 2.

Judgment of dismissal.

The demurrer to the complaint filed by the defendant in above-entitled cause having been heretofore heard by the court, fully considered, and sus-

tained, it is now, this 2nd day of October, 1891, upon motion of B. F. Dennison, esq., attorney for defendant Geo. A. Meigs, ordered and adjudged by the court that this cause be and the same is hereby dismissed, to which decision of the court the counsel for the United States excepts and his exception is allowed.

C. H. HANFORD, *Judge.*

8 United States of America.—In the circuit court of the United States, district of Washington, northern division, 9th circuit.

THE UNITED STATES
vs.
GEORGE A. MEIGS AND W. P. SAYWARD.

Assignment of errors.

And now, to wit, this the 2nd day of October, A. D. 1891, before the judges of the circuit court of the United States, at the city of Seattle, in said district of Washington, comes the said United States, by Patrick Kenry Winston, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the said court erred in sustaining the demurrer of the defendant to the complaint and rendering judgment in favor of the defendant and against said plaintiff, as will appear by an inspection of the record.

And the said United States prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that may be restored to all things which it has lost by occasion of the said judgment.

PATRICK HENRY WINSTON,
Attorney for Plaintiff in Error.

And on the back of the foregoing is endorsed the words and figures following:

In the United States circuit court for the district of Washington, northern division. United States of America, plaintiff, vs. William P. Sayward and George A. Meigs. Assignment of errors. Filed October 2nd, 1891, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, greeting:

Because in the record and proceeding, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The United States, plaintiff, and William P. Saywood and George A. Meigs, defendants, a manifest error hath happened, to the great damage of the said United States, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

together with this writ, so that you have the same at Washington on the fourth Monday of November next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States, should be done.

Witness, the honorable Melville W. Fuller, chief justice of the Supreme Court of the United States, this third day of October, in the year of our Lord one thousand eight hundred and ninety-one and of the independence of the United States the one hundred and sixteenth.

[SEAL.] A. REEVES AYRES,
Clerk of the Circuit Court, District of Washington.
By R. M. HOPKINS,
Deputy Clerk.

The above writ of error is hereby allowed.

C. H. HANFORD,
U. S. District Judge,
Presiding in Circuit Court, District of Washington.

(Indorsed:) No. 2. United States vs. W. P. Sayward and George A. Meigs. Writ of error. Filed Oct. 3, 1891, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 United States of America.—Circuit court of the United States, ninth circuit, district of Washington.

The United States of America to William P. Saywood and George A. Meigs, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of November next, pursuant to a writ of error filed in the clerk's office of the circuit court, ninth judicial circuit, district of Washington, wherein the United States of America is plaintiff in error and your are defendants in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 3rd day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of our independance the 116th.

[SEAL.] C. H. HANFORD,
District Judge Presiding in the said Circuit Court.

(Indorsed:) No. 2. United States vs. W. P. Sayward and Geo. A. Meigs. Citation.

11 U. S. MARSHAL'S OFFICE,
District of Washington, ss:

I, Thos. R. Brown, U. S. marshal for the district of Washington, do hereby certify that I did, at the city of Tacoma, county of Pierce, State of

Washington, on the third day of October, A. D. 1891, personally serve on B. F. Dennison, esq., counsel for Geo. A. Meigs, one of defendants in within entitled cause, a true copy of the annexed citation.

Dated at Seattle, Washington, this the 5th day of October, A. D. 1891.

THOS. R. BROWN,
U. S. Marshal, District of Washington.

Marshal's fees:

41 miles travel by rail @ 20c	$8.10
Serving citation	4.00
	12.10

(Indorsed:) Filed Oct. 5, 1891, in the U. S. circuit court. A. Reeves Ayres, clerk. By R. M. Hopkins, deputy.

12 In the United States circuit court for the district of Washington, northern division.

UNITED STATES OF AMERICA,
District of Washington, ss.

I, A. Reeves Ayres, clerk of the United States circuit court for the district of Washington, ninth judicial circuit, do hereby certify that the foregoing transcript, numbering from pages one (1) to eleven (11) inclusive, is a true copy of the record, and of the assignment of errors, and of all proceedings had in the foregoing entitled cause.

In witness whereof, I have hereunto set my hand and affixed my official seal this 6th day of November, A. D. 1891.

[SEAL.] A. REEVES AYRES,
Clerk.
By R. M. HOPKINS,
Deputy Clerk.

13 In the United States circuit court, district of Washington, northern division.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
WILLIAM P. SAYWARD AND GEORGE A. MEIGS,
defendants in error.

Judge's certificate.

I, C. H. Hanford, U. S. district judge for the district of Washington, do hereby certify that upon the hearing of the above-entitled cause by the United States circuit court for the district of Washington, at a term of said court held by me as presiding judge, at the city of Seattle, in and for the northern division of said district, it was by the said court considered and adjudged to the effect that, forasmuch as the amount and value in controversy in said cause is less than two thousand dollars, the same is not one of which said court has jurisdiction, and that the demurrer of the defendant, George A. Meigs, be sustained, and said cause dismissed.

And a writ of error from the Supreme Court of the United States to said circuit court having been duly sued out in said cause, I do, therefore,

pursuant to the fifth section of chapter 517, 26th United States Statutes at Large, further certify, that in said cause the following question is in issue, viz: Is an action by the United States of America as plaintiff, to recover damages in a sum less than two thousand dollars, within the jurisdiction of said circuit court? And that the same is the only question for consideration of the Supreme Court upon said writ of error.

[SEAL.] C. H. HANFORD,
U. S. District Judge.

14 (Indorsement on cover:) Case No. 14952. Term No. 355. The United States, plaintiff in error, vs. William P. Sayward and George A. Meigs. Washington C. C. U. S. Filed December 29, 1891.

Washington, on the third day of October, A. D. 1891, personally serve on B. F. Dennison, esq., counsel for Geo. A. Meigs, one of defendants in within entitled cause, a true copy of the annexed citation.

Dated at Seattle, Washington, this the 5th day of October, A. D. 1891.

THOS. R. BROWN,
U. S. Marshal, District of Washington.

Marshal's fees:

41 miles travel by rail @ 20c	$8.10
Serving citation	4.00
	12.10

(Indorsed:) Filed Oct. 5, 1891, in the U. S. circuit court. A. Reeves Ayres, clerk. By R. M. Hopkins, deputy.

12 In the United States circuit court for the district of Washington, northern division.

UNITED STATES OF AMERICA,
District of Washington, ss.

I, A. Reeves Ayres, clerk of the United States circuit court for the district of Washington, ninth judicial circuit, do hereby certify that the foregoing transcript, numbering from pages one (1) to eleven (11) inclusive, is a true copy of the record, and of the assignment of errors, and of all proceedings had in the foregoing entitled cause.

In witness whereof, I have hereunto set my hand and affixed my official seal this 6th day of November, A. D. 1891.

[SEAL.] A. REEVES AYRES,
Clerk.
By R. M. HOPKINS,
Deputy Clerk.

13 In the United States circuit court, district of Washington, northern division.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
WILLIAM P. SAYWARD AND GEORGE A. MEIGS,
defendants in error.

Judge's certificate.

I, C. H. Hanford, U. S. district judge for the district of Washington, do hereby certify that upon the hearing of the above-entitled cause by the United States circuit court for the district of Washington, at a term of said court held by me as presiding judge, at the city of Seattle, in and for the northern division of said district, it was by the said court considered and adjudged to the effect that, forasmuch as the amount and value in controversy in said cause is less than two thousand dollars, the same is not one of which said court has jurisdiction, and that the demurrer of the defendant, George A. Meigs, be sustained, and said cause dismissed.

And a writ of error from the Supreme Court of the United States to said circuit court having been duly sued out in said cause, I do, therefore,

pursuant to the fifth section of chapter 517, 26th United States Statutes at Large, further certify, that in said cause the following question is in issue, viz: Is an action by the United States of America as plaintiff, to recover damages in a sum less than two thousand dollars, within the jurisdiction of said circuit court? And that the same is the only question for consideration of the Supreme Court upon said writ of error.

[SEAL.] C. H. HANFORD,
U. S. District Judge.

14 (Indorsement on cover:) Case No. 14952. Term No. 355. The United States, plaintiff in error, vs. William P. Sayward and George A. Meigs. Washington C. C. U. S. Filed December 29, 1891.

Office Supreme Court, U. S.
FILED.
OCT 15 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, PLAINTIFF IN error,
v.
WILLIAM P. SAYWARD AND GEORGE A. Meigs.
} No. 75.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, PLAINTIFF IN error,
v.
WILLIAM P. SAYWARD AND GEORGE A. Meigs.
} No. 75.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.

The United States brought this action in the circuit court of the United States for the district of Washington to recover from the defendants the sum of $1,470, value of certain logs, the property of the United States, unlawfully converted by the defendants and disposed of to their own use.

The defendants demurred to the complaint on the ground that although the United States are the plaintiff, yet as the amount sued for is less than $2,000, the case is not within the jurisdiction of the circuit court.

The district judge, Hanford, who sat alone in the case, in his opinion, on page 3, says:

> The identical question raised by this demurrer was passed upon by Judge Sawyer in the case of *The United States* v. *C. Huffmaster* (35 Fed. Rep., p. 81), * * * in which he held that the several acts of Congress defining the jurisdiction of the circuit courts of the United States, approved March 3, 1875, etc., have so changed the law as to deprive the circuit courts of jurisdiction of actions at law where the amount involved is less than the minimum specified in these statutes, even in cases wherein the United States is plaintiff. Similar questions have been passed upon in the cases * * * and in those cases the decisions were contrary to those rendered by Judge Sawyer. Notwithstanding that the latter decisions and the majority in number are to the contrary, I consider it my duty to follow the ruling of Judge Sawyer, who, if present, would be entitled to preside in this court, and in accordance with whose opinion the judgment would have to be rendered, whether I should agree with him or not. Therefore, without discussing the merits of the case, I will sustain the demurrer upon the authority of the decisions rendered by the circuit judge of this circuit.

ARGUMENT.

Section 629, Revised Statutes, provides *inter alia*—

> The circuit courts shall have original jurisdiction as follows:
>
> * * * * *
>
> *Third.* Of all suits at common law, where the United States, or any officer thereof, suing under the authority of any act of Congress, are plaintiffs.
>
> * * * * *

In *United States* v. *Mooney* (116 U. S., 104) the United States brought an action at law in the *circuit court* of the United States to recover of the defendant $20,000, the value of certain merchandise which the defendant was alleged to have forfeited to the United States for violation of the revenue laws.

On motion by defendant to dismiss for want of jurisdiction, on the ground that the ninth section of the judiciary act gave to the *district* courts exclusive original cognizance "of all suits for penalties and forfeitures incurred under the laws of the United States," it was contended on behalf of the United States that the act of March 3, 1875, gave concurrent jurisdiction to the circuit courts of all suits for penalties and forfeitures.

Mr. Justice Woods, delivering the opinion of the court denying such jurisdiction in the circuit court, after reviewing the legislation on the subject, said:

> The act of 1875, it is clear, was not intended to interfere with the prior statute conferring jurisdiction upon the circuit or district courts in special cases and over particular subjects (pp. 107–108).

In *United States* v. *Kentucky R. Mills, etc.* (45 Fed. Rep., 273), the identical question here presented was considered by Judge Barr in a well-reasoned opinion in the course of which he said (p. 275):

> This method of reading this section proves, I think, that Congress intended to make the amount in dispute jurisdictional in all of the classes of cases mentioned except two. These two are where the United States are plaintiffs or petitioners, or where the controversy is between citizens of the same State claiming lands under grants of different States.